

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

DAVID N. LINDSAY

Defendant.

CIVIL CASE NO.

**COMPLAINT**

The United States of America ("United States"), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency, files this complaint and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought by the United States pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a). The United States seeks to recover response costs that it has incurred in conducting response activities as a result of releases and threatened release of hazardous substances into the environment at or near the Lakeland Disposal Service, Inc. Site ("LDS Site" or "Site") in Kosciusko County, Indiana. The United States also seeks a declaratory judgment,

pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring that Defendant will be liable for any further response costs that the United States may incur as a result of releases or threatened release of hazardous substances into the environment at the LDS Site and any area to which contamination may have migrated from the LDS Site.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

### **GENERAL ALLEGATIONS**

4. David N. Lindsay is an individual person who currently resides at 41 Ama Speaks Lane in Wallingford, Kentucky.

5. David N. Lindsay was a past president and owner of Lakeland Disposal Service, Inc. (LDS), a waste disposal company, from approximately June 1974 until approximately June 1976.

6. At all times relevant to this action, David N. Lindsay operated LDS at the LDS Site at which it stored and disposed of certain industrial wastes including, but not limited to, plating waste containing various hydroxide sludges of chromium, copper and lead, among other hazardous substances, and wastewater treatment sludge containing chromium, copper and nickel, among other hazardous substances.

7. As president and owner of LDS, David N. Lindsay managed the activities, affairs, and business of the LDS, including the activities which gave rise to this action.

8. The LDS Site encompasses approximately 39 acres and is located approximately three and one-half miles northwest of Claypool, Indiana, on County Road 450W, in Kosciusko County, Indiana.

### **FIRST CLAIM FOR RELIEF**

#### **(Owner/Operator Claim)**

9. Paragraphs 1 through 8 are realleged and incorporated herein by reference.

10. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person ... at any facility . . . [shall be liable for],

\* \* \*

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

11. David N. Lindsay is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. The LDS Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

13. At all times relevant to this action, there have been “releases” and “threatened releases” of “hazardous substances” into the environment at or from the LDS Site, within the meaning of Sections 101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22) and 9607(a), including, but not limited to, plating waste containing various hydroxide sludges of chromium, copper and lead, among other hazardous substances, and wastewater treatment sludge containing chromium, copper and nickel, among other hazardous substances.

14. The United States has incurred and will continue to incur “response costs,” as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for actions taken in response to the release or threatened release of hazardous substances at or from the LDS Site, including, but not limited to, costs of overseeing remedial investigations, studies and reports pursuant to a 1989 Administrative Order on Consent captioned In the matter of Lakeland Disposal Service, Inc. Landfill Facility, EPA Docket No. V-W-‘89-C-011; and costs of overseeing the remedial work, as specified by the Record of Decision (ROD) and ROD amendment, pursuant to a 1994 Unilateral Administrative Order captioned In the matter of Lakeland Disposal Service, Inc. Site.

15. The United States’ response actions taken at or in connection with the LDS Site and the costs incurred incident thereto were not inconsistent with the National Contingency Plan (NCP), which was promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300.

16. Defendant David N. Lindsay is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), because he owned and/or operated the LDS Site during the period in which hazardous substances were disposed of at the LDS Site.

17. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable to the United States for all response costs incurred or that will be incurred by the United States in connection with the LDS Site, including enforcement costs, and prejudgment interest on such response costs.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment in favor of the United States and against Defendant David N. Lindsay, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred by the United States, including enforcement costs, and prejudgment interest, for response actions in connection with the LDS Site;

2. Enter a declaratory judgment in favor of the United States and against Defendant David N. Lindsay, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendant is liable for future response costs incurred by the United States, in connection with the LDS Site and any area to which hazardous substances released at the Site may have migrated;

3. Award the United States its costs of this action; and

4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

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### CERTIFICATE OF SERVICE

Pursuant to Paragraph 32 of the proposed Consent Decree, which was lodged with the Court concomitantly with the filing of this Complaint, the undersigned certifies that a copy of the foregoing Complaint was served upon the individual that Settling Defendant have authorized and listed on his executed signature page to the proposed Consent Decree to accept service of this Complaint by regular U.S. mail.

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